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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN JOSE DIVISION**
13

14 SAN FRANCISCO TECHNOLOGY, INC.,

15 Plaintiff,

16 v.

17 THE GLAD PRODUCTS COMPANY,
18 BAJER DESIGN & MARKETING INC.,
19 BAYER CORPORATION, BRIGHT
20 IMAGE CORPORATION, CHURCH &
DWIGHT CO. INC., COLGATE-
PALMOLIVE COMPANY, COMBE
21 INCORPORATED, THE DIAL
CORPORATION, EXERGEN
22 CORPORATION, GLAXOSMITHKLINE
LLC, HI-TECH PHARMACAL CO. INC.,
23 JOHNSON PRODUCTS COMPANY
INC., MAYBELLINE LLC, MCNEIL-PPC
24 INC., MEDTECH PRODUCTS INC.,
PLAYTEX PRODUCTS INC., RECKITT
25 BENCKISER INC., ROCHE
DIAGNOSTICS CORPORATION,
26 SOFTSHEEN-CARSON LLC, SUN
PRODUCTS CORPORATION,
27 SUNSTAR AMERICAS INC.,

28 Defendants.

No. CV10-00966 JF PVT

**DEFENDANT BAJER DESIGN &
MARKETING, INC.'S NOTICE OF
MOTION AND MOTION TO DISMISS
PURSUANT TO FED.R.CIV.P. 12(B)(1),
FED.R.CIV.P. 12(B)(6), FED.R.CIV.P. 8,
AND FED.R.CIV.P. 9**

Date: June 11, 2010
Time: 9:00 a.m.
Ctrm: 3, 5th Fl., Hon. Jeremy Fogel

Complaint Filed: March 5, 2010

NOTICE OF MOTION AND MOTION TO DISMISS

PLEASE TAKE NOTICE, that on June 11, 2010 at 9 a.m., before the Honorable Judge Jeremy Fogel, at the United States District Court for the Northern District of California, 280 S. 1st Street, San Jose, California 95113, Defendant Bajer Design & Marketing, Inc. ("Bajer"), by and through its counsel of record, will move the Court to dismiss San Francisco Technology, Inc.'s ("SFTI") Complaint this case.

This Motion is based on the accompanying Memorandum of Points and Authorities, the pleadings and papers on file in this action, the accompanying request for judicial notice and such matters as the Court may take judicial notice, and argument and evidence to be presented at the hearing on this Motion.

CONCISE STATEMENT OF RELIEF SOUGHT

Bajer hereby requests the Court dismiss San Francisco Technology, Inc.'s ("SFTI") Complaint this case *with prejudice* because SFTI lacks standing to bring this action. SFTI has not and cannot allege a cognizable injury in fact and therefore lacks *qui tam* Article III standing under 35 U.S.C. § 292(b) and therefore this Court lacks subject matter jurisdiction to decide this case. Fed.R.Civ.P. 12(b)(1). Further, SFTI has not stated a claim against Bajer upon which relief can be granted because Bajer's products are and were patented as indicated on the product packaging, and allegations of marking an expired patent number on a product cannot, standing alone, rise to the level of a violation of 35 U.S.C. § 292(a). Fed.R.Civ.P. 12(b)(6). Last, SFTI's Complaint

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1 fails to meet minimum pleading standards and therefore must be dismissed.

2 Fed.R.Civ.P. 8, 9.

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4 DATED: April 8, 2010

RYAN KROMHOLZ & MANION, S.C.

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6 By: //s//
7 DANIEL R. JOHNSON
8 Attorneys for Defendant Bajer Design &
9 Marketing, Inc.

10
11 DATED: April 8, 2010

HANSON BRIDGETT LLP

12
13 By: //s//
14 STEPHEN B. PECK
15 Attorneys for Defendant Bajer Design &
16 Marketing, Inc.